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EXAMINER

PAULS, JOHN A

ART UNIT	PAPER NUMBER
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3686

MAIL DATE	DELIVERY MODE
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08/04/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/537,874	Applicant(s) ALSAFADI ET AL.	
	Examiner JOHN A. PAULS	Art Unit 3686	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 June 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

1. This action is in reply to the communication filed on 17 June, 2009.
2. Claims 1, 4—7, 9, 12 and 13 have been amended.
3. Claim 11 has been cancelled.
4. Claims 1 – 10 and 12 - 20 are currently pending and have been examined.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 1 – 12 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The steps recited do not qualify as a statutory process. In order for a method to be considered a "process" under §101, a claimed process must either: (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials). Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972). If neither of these requirements is met by the claim, the method is not a patent eligible process under §101 and is non-statutory subject matter. Although the steps are performed using a computer, the computer is a field of use limitation because the steps are human actions that do not require (i.e. are not tied to) the computer. Examiner notes that a processor may be a human being.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
9. Claims 1 - 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mazess et al. (US 6,160,866 A) and in further view of Barry et al. (US 6,081,786 A).

CLAIM 1

Mazess as shown discloses a measurement apparatus with the following limitations:

- *receiving, by a processor, at least one physical characteristic of the patient determined from the examination; (see at least Mazess column 5 line 29 – 32; column 6 line 28 – 39; column 9 line 7 – 9 and column 21 line 54 - 56);*
- *receiving, by a processor, established norms for the at least one characteristic; (see at least Mazess column 6 line 28 – 39; column 21 line 58 – 65 and column 23 line 59 – 65);*
- *selecting, by a processor, one of the established norms to be applied to the patient based on the at least one characteristic, the guidelines relating to the determination of the at*

least one characteristic and the information about the patient other than from the examination; (see at least Mazess column 6 line 28 – 39; column 30 line 66 to column 31 line 34).

Examiner notes that Mazess discloses a procedure for conducting the examination in at least column 30 line 66 to column 31 line 16. This disclosure procedure has the same meaning as “*guideline related to the determination of the characteristic*”.

Mazess shows the limitations above. Mazess may or may not specifically disclose the following limitations, however, Barry does:

- *receiving, by a processor, guidelines relating to determination of the at least one characteristic from the examination;* (see at least Barry column 5 line 7 – 20 and Figure 2 and 3);
- *receiving, by a processor, information about the patient other than from the examination;* (see at least Barry column 4 line 56 to column 5 line 6).

Barry discloses a system and method for selecting a treatment regimen that includes applying patient information and a knowledge base to an inference engine. It would be obvious to one of ordinary skill in the art at the time of the invention to modify the measurement system of Mazess with the treatment selection system of Barry because obtaining guidelines and historical patient information for use in an inference engine allows complex treatment options to be made available (see Barry column 1 line 29 – 39); since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

It would also be an obvious modification to Mazess/Barry to have guidelines related to a measurement procedure included in the knowledge base rather than being manually performed.

CLAIM 2

The combination of Mazess/Barry as shown discloses the limitations above relative to Claim 1.

Additionally, Mazess discloses the following limitations:

- *applying the norm to the anatomical feature to obtain a normal value for a measurable anatomical feature or a range of normal values for a measurable anatomical feature and comparing the determined anatomical feature of the patient to the normal value or range of normal values to determine whether the determined anatomical feature is indicative of normalcy of the patient or abnormalcy of the patient; (see at least Mazess column 15 line 46 – 66).*

CLAIM 3

The combination of Mazess/Barry as shown discloses the limitations above relative to Claim 1.

Mazess/Barry may or may not specifically disclose the following limitations:

- *applying the norm to the ratio to obtain a normal value for the ratio or a range of normal values for the ratio and comparing a ratio derived from the determined anatomical features of the patient to the derived normal value or range or range of normal values to determine whether the at least one anatomical feature falls is indicative of normalcy of the patient or abnormalcy of the patient.*

Mazess discloses averaging values, values that are a pre-defined amount from a statistical norm, area values and other mathematical manipulations of measured data. The combination of Mazess/Barry may or may not specifically disclose a ratio. However, Examiner takes **Official**

Notice that calculating a ratio of measured values is old and well known in the arts, therefore it would be obvious to one of ordinary skill in the arts at the time of the invention to modify Mazess/Barry with the **Official Notice** taken so that a ratio between to measured values is calculated because it is a convenient measure of deviation from a normal value, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

10. Claims 4 - 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mazess et al. (US 6,160,866) and in further view of Barry et al. (US 6,081,786 A) and in further view of Laros (US 5,928,168 A).

CLAIM 4

The combination of Mazess/Barry as shown discloses the limitations above. Mazess/Barry may or may not specifically disclose the following limitations, however, Laros does:

- *the examination is an ultrasound examination of the patient;* (see at least Laros column 2 line 8 – 20).

Laros discloses an apparatus and method for estimating fetal development that includes ultrasound examinations. It would be obvious to one of ordinary skill in the art at the time of the invention to modify the measurement system of Mazess/Barry with the ultrasound examination of Laros because using ultrasound technology would expose the patient and fetus to more benign radiation, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

CLAIMS 5 and 6

The combination of Mazess/Barry/Laros as shown discloses the limitations above. Additionally, Mazess discloses the following limitations:

- *measuring a length, size or diameter of a bone in the patient or measuring a circumference of a head or abdomen; (see at least Mazess column 21 line 54 – 56).*
- *measuring at least two anatomical features; (see at least Mazess column 23 line 41 – 65 and column 24 line 11 - 19).*
- *calculating a ratio of two anatomical features, guidelines relating to the ratio of the two anatomical features being obtained; (see at least Mazess column 23 line 59 – 65).*

Mazess/Barry/Laros may or may not specifically disclose calculating a ratio per se, however, Mazess discloses averaging values (see at least Mazess column 23 line 59 – 65), values that are a pre-defined amount from a statistical norm (see at least Mazess column 18 line 1 - 3), area values (see at least Mazess column 19 line 36 – 40) and other mathematical manipulations of measured data (see at least Mazess column 9 line 7 – 12). Mazess/Barry/Laros may or may not specifically disclose a ratio. However, Examiner takes **Official Notice** that calculating a ratio of to measured values is old and well known in the arts, therefore it would be obvious to one of ordinary skill in the arts at the time of the invention to modify Mazess/Barry/Laros with the **Official Notice** taken so that a ratio between to measured values is calculated because it is a convenient measure of deviation from a normal value, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

11. Claims 7 - 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mazess et al. (US 6,160,866) and in further view of Barry et al. (US 6,081,786 A) and in further view of Wong et al. (US 6,260,021 B1).

CLAIMS 7 - 9

The combination of Mazess/Barry as shown discloses the limitations above. Mazess/Barry may or may not specifically disclose the following limitations, however, Wong does:

- *expressing the at least one characteristic in XML syntax; (see at least Wong column 2 line 21 – 30 and 38 – 45; column 12 line 6 – 13 and column 13 line 34 – 37);*
- *expressing the established normal ranges of the at least one characteristic in XML syntax; (see at least Wong column 2 line 21 – 30 and 38 – 45; column 12 line 6 – 13 and column 13 line 34 – 37);*
- *the information about the patient other than obtained from the results of the examination is received from a hospital or departmental information system using HL7 messaging which uses XML syntax; (see at least Wong column 2 line 21 – 30 and 38 – 45; column 7 line 59 – 62; column 12 line 6 – 13 and column 13 line 34 – 37).*

Wong discloses an apparatus and method for distributing medical images over a computer network that includes XML and HL7 formats. It would be obvious to one of ordinary skill in the art at the time of the invention to modify the measurement system of Mazess/Barry with the image and other medical information formats of Wong because using these standards enables uniform access and ready distribution of medical images and associated records in electronic form (see Wong column 1 line 7 – 10), since so doing could be performed readily and easily by

any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

CLAIM 10

The combination of Mazess/Barry/Wong as shown discloses the limitations above relative to Claim 9. Mazess/Barry/Wong may or may not specifically disclose the following limitations:

- *the information about the patient is coded in the hospital or departmental information system, further comprising accessing a vocabulary to decode the information about the patient prior to the selection of one of the established norms.*

However, Examiner takes **Official Notice** that it is old and well known in the arts to use coding to indicate information about a patient, in particular as it regards diagnosis information.

Therefore it would be obvious to one of ordinary skill in the art at the time of the invention to modify the measurement system of Mazess/Barry/Wong with the **Official Notice** taken so that patient data was coded and that information to decode the information would also be accessible, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

12. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mazess et al. (US 6,160,866 A) and in further view of Wong et al. (US 6,260,021 B1) and in further view of Barry et al. (US 6,081,786 A).

CLAIM 12

Mazess as shown discloses a measurement apparatus with the following limitations:

- *receiving, by a processor, at least one physical characteristic of the patient from the examination; (see at least Mazess column 5 line 29 – 32; column 6 line 28 – 39; column 9 line 7 – 9 and column 21 line 54 - 56);*
- *receiving, by a processor, established norms for the at least one characteristic; (see at least Mazess column 6 line 28 – 39; column 23 line 59 – 65);*
- *receiving, by a processor, information about the patient other than from the examination from a hospital or departmental information system using HL7 messaging which uses XML syntax; (see at least Mazess column 6 line 28 – 39; column 30 line 61 – 65).*

Mazess may or may not specifically disclose information in the HL7 or XML format; however, Wong discloses an apparatus and method for distributing medical images over a computer network using XML and HL7 formats with the following limitations:

- *expressing, by a processor, of the at least one characteristic in XML syntax; (see at least Wong column 2 line 21 – 30 and 38 – 45; column 12 line 6 – 13 and column 13 line 34 – 37);*
- *expressing, by a processor, the established normal ranges of the at least one characteristic in XML syntax; (see at least Wong column 2 line 21 – 30 and 38 – 45; column 12 line 6 – 13 and column 13 line 34 – 37);*
- *receiving, by a processor, information using HL7 messaging which uses XML syntax; (see at least Wong column 2 line 21 – 30 and 38 – 45; column 7 line 59 – 62; column 12 line 6 – 13 and column 13 line 34 – 37).*

Wong discloses an apparatus and method for distributing medical images over a computer network that includes XML and HL7 formats. It would be obvious to one of ordinary skill in the art at the time of the invention to modify the measurement system of Mazess/Barry with the image and other medical information formats of Wong because using these standards enables uniform access and ready distribution of medical images and associated records in electronic form (see Wong column 1 line 7 – 10), since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

The combination of Mazess/Wong discloses the limitations shown above. Mazess/Wong may or may not specifically disclose the following limitation, however, Barry does:

- *receiving, by a processor, guidelines relating to the determination of the at least one characteristic from the examination, the guidelines being described using a methods ontology based on semantic web technology; (see at least Barry column 5 line 7 – 20 and Figure 2 and 3);*
- *selecting, by a processor, one of the established norms to be applied to the patient based on the at least one characteristic, the guidelines relating to the determination of the at least one characteristic and the information about the patient other than from the examination; (see at least Barry column 4 line 56 to column 5 line 20 and Table 2).*

Barry discloses a system and method for selecting a treatment regimen that includes applying patient information and a knowledge base to an inference engine. It would be obvious to one of ordinary skill in the art at the time of the invention to modify the measurement system of Mazess/Wong with the treatment selection system of Barry because obtaining guidelines and

historical patient information for use in an inference engine allows complex treatment options to be made available (see Barry column 1 line 29 – 39); since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

It would also be an obvious modification to Mazess/Barry to have guidelines related to a measurement procedure included in the knowledge base rather than being manually performed.

13. Claim 13, 14, 18, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mazess et al. (US 6,160,866 A) and in further view Barry et al. (US 6,081,786 A).

CLAIM 13

Mazess as shown discloses a measurement apparatus with the following limitations:

- *a modality for obtaining physical measurements of a patient and enabling at least physical characteristic of the patient to be derived; (see at least Mazess column 5 line 29 – 32; column 9 line 7 – 9 and column 21 line 54 - 56);*
- *a processor coupled to said modality; a repository of medical information about the patient coupled to said processor; (see at least Mazess column 6 line 28 – 38 and column 7 line 3 - 12);*
- *at least one library of norms relating to characteristics of the patient coupled to said processor; (see at least Mazess column 21 line 58 – 65 and column 23 line 59 – 65);*

Mazess discloses the limitations shown above. Mazess may or may not specifically disclose the following limitations, however, Barry does:

- *at least one library coupled to said processor and containing clinical guidelines associated with a procedure used by said modality to derive the characteristics; (see at least Barry column 5 line 7 – 20 and Figure 2 and 3);*
- *said processor being arranged to receive the characteristics of the patient derived by said modality, medical information about the patient from said repository of medical information, the norms from said at least one library of norms and the clinical guidelines from said at least one library of clinical guidelines and select one of said norms which is most appropriate for use with the patient; (see at least Barry column 4 line 56 to column 5 line 20 and Table 2);*

Barry discloses a system and method for selecting a treatment regimen that includes applying patient information and a knowledge base to an inference engine. It would be obvious to one of ordinary skill in the art at the time of the invention to modify the measurement system of Mazess with the treatment selection system of Barry because using an inference engine to make decisions based on medical information allows complex treatment options to be made available; (see Barry column 1 line 29 – 39); since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

It would also be an obvious modification to Mazess/Barry to have guidelines related to a measurement procedure included in the knowledge base rather than being manually performed.

CLAIMS 14, 19 and 20

Mazess as shown discloses the limitations shown above relative to Claim 13. Mazess also discloses the following limitations:

- *said processor is arranged to apply the norm to the measurements obtained by said modality to provide an indication of a normal or abnormal condition; (see at least Mazess column 15 line 46 – 66);*
- *said processor is arranged in connection with said modality; (see at least Mazess column 6 line 28 – 38 and column 7 line 3 - 12).*

Mazess discloses the limitations shown above. Mazess may or may not specifically disclose the following limitations, however, Barry does:

- *links between said processor, said repository of medical information, said at least one library of norms and said at least one library of clinical guidelines are Internet or Intranet connections; (see at least Barry column 8 line 50 - 61 and Figures 2 and 3).*

Barry discloses a system and method for selecting a treatment regimen that includes applying patient information and a knowledge base to an inference engine. It would be obvious to one of ordinary skill in the art at the time of the invention to modify the measurement system of Mazess with the treatment selection system of Barry because using an inference engine to make decisions based on medical information allows complex treatment options to be made available; (see Barry column 1 line 29 – 39); since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

It would also be an obvious modification to Mazess/Barry to have guidelines related to a measurement procedure included in the knowledge base rather than being manually performed.

CLAIM 18

The combination of Mazess/Barry discloses the limitations shown above relative to Claim 13.

Mazess/Barry may or may not specifically disclose the following limitation:

- *library of guidelines is arranged to describe the guidelines using a methods ontology based on semantic web technology.*

However, Examiner takes **Official Notice** that it is old and well known in the art that data accessed over the Internet uses methods ontology (i.e. independent of the application program) based on semantic web technology (i.e. Resource Description Framework (RDF)). Therefore it would be obvious to one of ordinary skill in the art at the time of the invention to modify the measurement system of Mazess/Barry with the **Official Notice** taken because using standard data transfer methods and technology allows such data to be transferred easily over the Internet by a number of different applications, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

14. Claims 15 – 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mazess et al. (US 6,160,866 A) and in further view Barry et al. (US 6,081,786 A) and in further view of Wong et al. (US 6,260,021 B1).

CLAIMS 15 - 17

The combination of Mazess/Barry discloses the limitations shown above relative to Claim 13.

Mazess/Barry may or may not specifically disclose the following limitation, however, Wong does:

- *modality is arranged to express the measurements of the patient and the derived values relating to physical conditions of the patient in XML syntax; (see at least Wong column 12 line 6 – 13 and column 13 line 34 – 37);*
- *repository of medical information about the patient is arranged to remotely communicate with said processor using HL7 messaging using XML syntax; (see at least Wong column 12 line 6 – 13 and column 13 line 34 – 37);*
- *library of norms is arranged to express the norms in XML syntax; (see at least Wong column 12 line 6 – 13 and column 13 line 34 – 37).*

Wong discloses an apparatus and method for distributing medical images over a computer network that includes XML and HL7 formats. It would be obvious to one of ordinary skill in the art at the time of the invention to modify the measurement system of Mazess/Barry with the image and other medical information formats of Wong because using these standards enables uniform access and ready distribution of medical images and associated records in electronic form (see Wong column 1 line 7 – 10), since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

Response to Arguments

15. Applicant's arguments filed 17 June, 2009 have been fully considered but they are not persuasive.
16. Applicant argues that the Office Action of 18 March, 2009 erred by asserting that Mazess discloses selecting established norms based in part on guidelines related to determining

the characteristic without not receiving such guidelines. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

17. Applicant argues that Mazess does not disclose guidelines relating to the **determination** of the at least one characteristic. Examiner interprets this limitation to mean: "what is the required procedure for taking this measurement?" as disclosed in the specification of the present application page 6 lines 11 and 12, page 8 lines 12 – 14, page 10 lines 30 – 32 and page 12 line 10. Examiner respectfully disagrees. Mazess in at least column 5 line 29 – 32; column 6 line 39 – 46; column 9 line 36 – 39 and column 30 line 66 to column 31 line 16 discloses guidelines to be followed when making a measurement i.e. dual beam used for measurements of bone character; single beam used for measurements; scan taken from the lateral direction. Mazess does not disclose that the guidelines are received by the processor. Barry discloses guidelines and advisory information that may be useful in implementing a treatment regimen. Such guidelines and advisory information may certainly be related in some way to the "characteristics of a patient". For example, one characteristic of a patient may be the symptoms of a disease.
18. Applicant argues that the Official Notice taken relative to Claims 3, 6, 10 and 18 are not based on specific factual findings predicated on sound technical and scientific reasoning in support of the conclusion of common knowledge; and that the cited references fail to address these limitations. Examiner respectfully disagrees. In the March 18, 2009 Office

Action Examiner has specifically provided the basis for such reasoning in that a ratio “is a convenient measure of deviation from a normal value” and “using standard data transfer methods and technology allows such data to be transferred easily over the Internet by a number of different applications”.

19. With regard to the fact that it is old and well known to use coding to provide information about a patient, Examiner refers Applicant to the National Center for Health Statistics web site which shows ICD – 9 codes have been in use since at least 1996.
20. Additionally, with regards to Claim 18, Examiner notes that the disclosure of the present application on page 8 line 6 – 11 discloses that methods ontology methods is known in the art, thus constituting applicant’s own admission.

Applicant has not properly traversed the Official Notice taken. Applicant has stated that the Officially Noticed facts are not in the cited references; however, Applicant has not stated that the Officially Noticed facts are not common knowledge or well known in the art or why the Officially Noticed facts are not common knowledge or well known in the art.

The Examiner would like to note the requirements for traversing official notice from MPEP § 2144.03:

To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner’s action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b).

If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate [emphasis added].

Because Applicant has not specifically pointed out any errors in the Examiner's action, the officially noticed facts in the March 18, 2009 Office Action are deemed admitted prior art.

CONCLUSION

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Banks et al. (US 6,603,494 B1) which discloses modality guidance tools stored in a computer memory (see column 9 line 51 - 65).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to **John A. Pauls** whose telephone number is **(571) 270-5557**. The Examiner can normally be reached on Monday to Friday 7:30 to 5:00 4/5/9. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **JERRY O'CONNOR** can be reached at **571.272.6787**. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be

obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair> . Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866.217.9197** (toll-free).

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to (571) 273-**8300**.

Hand delivered responses should be brought to the **United States Patent and Trademark**

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401 Dulany Street

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/J. A. P./

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